

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEBRASKA**

IN THE MATTER OF	)	Case No. BK 17-81127-TLS
	)	
EAT FIT GOT HEALTHY FOODS, LLC et al <sup>1</sup>	)	Chapter 11
	)	
Debtors.	)	

**MOTION TO EXTEND DEADLINE TO ASSUME OR REJECT CERTAIN  
UNEXPIRED LEASES OF NONRESIDENTIAL REAL PROPERTY**

NOW COME the above-captioned Debtors, by and through their counsel of record, and request the entry of an order, extending the deadline within which the Debtors must assume or reject certain unexpired leases of nonresidential real property from the 120-day period set forth in § 365(d)(4)(A)(i) of the Bankruptcy Code (the "Motion") until February 26, 2019. In support of the Motion, the Debtors represent as follows:

**BACKGROUND**

1. On July 31, 2018 (the "Petition Date") Debtors filed 10 separate voluntary petitions for relief under Chapter 11 of the Bankruptcy Code in this Court (the "Related Cases") in the United States Bankruptcy Court for the District of Nebraska (the "Bankruptcy Court").
2. Each Debtor remains in possession of its assets and continues to operate as debtor-in-possession in accordance with 11 U.S.C. §§ 1107 and 1108.
3. An Official Committee of Unsecured Creditors has not yet been appointed in any of the Related Cases.
4. This is a core proceeding pursuant to 28 U.S.C. §157(2)(A).
5. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §1334.

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<sup>1</sup> The Debtors in this case include: Eat Fit Go Omaha Kitchen, LLC, Eat Fit Go Kansas City Kitchen, LLC, Eat Fit Go Georgia Kitchen, LLC, Eat Fit Go Arizona Kitchen, LLC, Eat Fit Go Healthy Foods - Des Moines, LLC, Eat Fit Go Healthy Foods - Kansas City, LLC, EFG Shared Services, LLC (No Rev), Eat Fit Go Healthy Foods - Omaha, LLC, and Eat Fit Go Healthy Foods - Minnesota, LLC.

6. Venue is proper in this Court pursuant to 28 U.S.C. §1408.<sup>2</sup>

**Debtors' Background**

7. It is estimated that the United States spends \$190.2 billion each year on obesity-related medical costs, with \$14 billion of that on childhood obesity alone. Obesity-related illnesses cause an estimated 300,000 deaths each year, making obesity the 2nd biggest killer behind tobacco. More, decades have been spent on the development and manufacture of processed foods (engineered to make food last longer and stretch further). Founded in 2015, Debtors aimed to revolutionize the way Americans think about and acquire food by providing chef-made meals that are made fresh daily, never frozen, low in sodium, high in protein, and allergy-friendly.

8. Distinct from the large meal kit delivery companies, Debtors business operations offer a one stop shopping where a customer can purchase breakfast, lunch, dinner, and snacks that are pre-cooked, pre-portioned, ready-to-eat meals. Capitalizing on a growing trend in healthy foods, Debtors opened its first store in February of 2016, in Omaha, NE, and has grown to 33 stores across eight states utilizing a mix of franchised locations and corporate owned stores. Beyond the rapidly increasing number of storefronts, Debtors have plans to expand into eCommerce with a delivery and a health and wellness mobile app with the goal of delivering healthy foods to customers' doors within 24 hours.

**RELIEF REQUESTED**

9. As part of its ordinary course operations, Debtors have entered into a number of a non-residential real property leases. A list of these leases is attached hereto as Exhibit "A" (the "Nonresidential Leases").

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<sup>2</sup> In the event the Debtors locate additional nonresidential real property leases prior to the hearing set on this motion, the Debtors' will supplement Exhibit A as necessary.

10. During the pendency of these cases, Debtor has rejected a number of leases that were deemed burdensome or unnecessary. At this point, Debtor remains a lessee under ten (10) Nonresidential Leases. Current, the deadline to assume or reject these Nonresidential Leases is November 28, 2018.

11. By this Motion, the Debtors request that the Court enter an order pursuant §§ 105(a) and 365(d)(4)(B)(i) of the Bankruptcy Code extending their deadline to assume or reject all Nonresidential Leases for a period of 90 days to expire on February 26, 2019 (the "Extended Deadline).

12. This request is intended to include all Debtors' nonresidential real estate leases, whether known or unknown, and whether or not identified specifically in this Motion.

### **BASIS FOR RELIEF**

13. A bankruptcy court may grant a 90-day extension of the time to assume or reject nonresidential real property leases for "cause." Whether to grant an extension is within the discretion of the bankruptcy court.

14. Factors which the courts have considered in deciding whether to exercise the discretion to allow an extension include: whether the rent has been or is being paid; whether the lease is a primary asset of the estate; whether there will be potential prejudice to the landlord for non-compensable damages; whether the landlord would receive a windfall; whether the case is unusually large or complex; and whether the debtor-in-possession has had a reasonable period of time to analyze the estate and formulate a reorganization plan. *See South Street Seaport, L.P. v. Burger Boys, Inc. (In re Burger Boys, Inc.)*, 94 F.3d 755, 761 (2nd Cir. 1996); *In re 611 Sixth Avenue Corp.*, 191 B. R. 295 (Bankr. S.D.N.Y. 1996) (including additional factors).

15. In these cases, the Debtors submit that cause exists for the Court to grant the requested extension of time to assume or reject the Nonresidential Leases.

16. First, and other than the month of August, the Debtors are current on all post-petition rent payments due to each of the lessors.

17. Second, the Nonresidential Leases constitute primary assets of these bankruptcy estates and are vital to all facets of the Debtors' collective ongoing operations. The Nonresidential Leases constitute the locations from which Debtors conduct their business.

18. Third, these bankruptcy cases are complex and as a result, cause is present to warrant an extension of time for the Debtors to analyze their collective Nonresidential Leases to determine whether they will be of benefit to their estates, their continued operations, and their reorganization efforts.

19. Fourth, and after analyzing its options, and after having shut down its operations in Georgia and Arizona, Debtors have come to the conclusion that it is in the best interests of the estates to market and sell Debtors as a going concern. To that end, Debtors will be hiring a national broker and filing appropriate motions to facilitate such sale. It is anticipated that the sale of Debtor's business as a going concern will necessitate the assumption and assignment of some or all of the Nonresidential Leases. However, Debtors should be forced to assume all of the Nonresidential Leases at this time and before the marketing and sale process has begun.

20. Thus, based on the foregoing, the Debtors submit that it is not yet possible at this early stage to determine whether the Nonresidential Leases benefit the Debtors' bankruptcy estates and therefore an extension of the assumption / rejection deadline is appropriate.

WHEREFORE, the Debtors respectfully request the entry of an order (a) extending the deadline for the Debtors to assume or reject the Nonresidential Leases to and including February 26, 2019; and (b) granting such other and further relief as is just and proper.

**EAT FIT GOT HEALTHY FOODS, LLC,  
Debtor**

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**EXHIBIT A – LEASES**

<b>Property Description</b>	<b>Lessor Name</b>	<b>Lessee Name</b>	<b>Document Title</b>	<b>Lease Date</b>
8877 South 137 <sup>th</sup> Circle, Omaha, NE 68138	Conagra Foods, Inc.	Eat Fit Go Healthy Foods – Omaha, LLC	Sublease	April 25, 2016
8877 South 137 <sup>th</sup> Circle, Omaha, NE 68138	Herbert J. Lavigne Family Foundation dba 8877 S. 137 <sup>th</sup> Circle, LLC	Eat Fit Go Healthy Foods – Omaha, LLC	Lease Agreement	May 3, 2017
304 North 179 <sup>th</sup> Street, Omaha, NE 68118	180 Burke, LLC	Eat Fit Go Healthy Foods – Omaha, LLC	Property Lease	July 30, 2015
1916 S. 67 <sup>th</sup> Street, Omaha, NE 68106	Waitt Aksarben 8 LLC	Eat Fit Go Healthy Foods – Omaha, LLC	Aksarben Village Retail Lease	December 14, 2015
West 83 <sup>rd</sup> Street & Mission Road, Prairie Village, KS	GRI Corinth North, LLC	Eat Fit Go Healthy Foods – Kansas City, LLC	Lease Agreement	July 18, 2016
4945 W. 119 <sup>th</sup> Street, Overland Park, KS 66209	Hawthorne Plaza, LLC	Eat Fit Go Healthy Foods – Kansas City, LLC	Shopping Center Lease Agreement	April 19, 2016
14919 West Maple Road, Omaha, NE 68116	Royce Grayhawk, LLC	Eat Fit Go Healthy Foods – Omaha, LLC	West Grayhawk Lease	March 25, 2016
Shopping Center in Olathe, KS	M-III Olathe Station Property, LLC	Eat Fit Go Healthy Foods – Kansas City, LLC	Lease Agreement	March 27, 2017
1449 Papillion Road, Papillion, NE 68138	WC 370 LLC	Eat Fit Go Healthy Foods – Omaha, LLC	Business Property Lease	June 1, 2016
4711 Rainbow BLVD, Westwood, KS	Woodside Village North, LLC	Eat Fit Go Healthy Foods – Kansas City, LLC	Retail Lease	2016